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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 142

HUGH PIERRE,

Petitioner,

vs.

THE STATE OF LOUISIANA.

BRIEF ON BEHALF OF THE STATE OF LOUISIANA

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MAY IT PLEASE THE COURT:

Statement of the Case.

The facts as we glean them from the record made up in the court below are that one Leopold Ory made an affidavit against Hugh Pierre, the petitioner, on October 20, 1936, before the Justice of the Peace of the First Ward of the Parish of St. John the Baptist, for assault with a dangerous weapon, with intent to kill.

Ignace Roussel was the duly elected and qualified constable of that ward and he was given the warrant and commitment for Pierre. Roussel was an officer of the law, disinterested in the controversy between Ory and Pierre.

Upon receipt of the warrant and commitment, Roussel went to the home of Pierre, the petitioner. The house was closed and he called the petitioner by name. Pierre's mother came out and Roussel informed her he had come to get Pierre to put him in jail because a charge had been made against him, and she replied: "No, you are not taking Hugh to jail tonight." They exchanged a few words, and suddenly the door opened, and Hugh Pierre, the petitioner, stepped out and fired two shots from a shotgun, killing Roussel instantly.

Roussel had no chance to say anything to Pierre, and Pierre then escaped through the rear of the house, fled to the adjoining Parish of St. Charles, where he was subsequently captured several days later and charged with the murder of Roussel.

The preponderance of the evidence does not bear out the statement contained in the brief of the petitioner that Roussel drew a gun and threatened and struck Pierre with a night-stick while his companions surrounded the house, or that he refused to show the warrant for Pierre's arrest, nor does it substantiate the statement that Pierre found his escape blocked, and fearing for his life, when Roussel broke open the front door with his gun in hand, he fired, killing Roussel. But the evidence in the court below showed that Roussel at no time spoke to Pierre, had never exchanged a word, and without any warning at all, was shot down and killed with two blasts from a double-barreled shotgun whilst he was in the act of talking to Pierre's mother.

The Motion to Quash.

Hugh Pierre was indicted by the Grand Jury of the Parish of St. John the Baptist for the crime of murder, on January 18, 1937 (R. 1).

Before trial, he filed a motion to quash the indictment as well as the entire grand and petit jury venires on the

ground that he is a member of the negro race, and that the general venire box

> "did not contain the names of any negro at the time the panel for the Grand Jury was drawn, which returned the Indictment herein against mover; that the officers of the law in charge of said matter not only failed to place in said venire box the names of any negroes qualified to serve as Grand or Petit Jurors, but deliberately excluded therefrom the names of any negroes qualified to serve as Grand or Petit Jurors, which action on the part of said officers is a denial of due process of law, and is a violation of mover's constitutional rights as granted him by law by the Constitution of the State of Louisiana of 1921, and specially the 14th Amendment of the Constitution of the United States of America."

He further averred,

> "that there has not been a negro on the Grand Jury or Petit Jury of said Parish for at least twenty years; that the officers of said Parish have *systematically*, unlawfully and unconstitutionally excluded negroes from the Grand or Petit Jury in said Parish during this period of time; that this exclusion of negroes as Jurors in this Parish is done sole- and only because of their race and color and results in a denial to mover of due process of law and the equal protection of the law guaranteed him under the Constitution of the State of Louisiana of 1921, and the Constitution of the United States of America" (R. 2-3).

After hearing evidence, the Judge of the trial court refused to quash the indictment and the grand jury venire, holding, among other things, that in its opinion:

> "* * * the Constitutional rights of the defendant is not affected by reason of the fact that persons of the colored or African race are not placed on the Grand Jury * * * the mere presentment of an indictment

> is not evidence of guilt. In other words, it simply informs the court of the commission of a crime and brings the accused before the court for prosecution" (R. 4).

However, the trial judge did grant the motion to quash the petit jury venire, being of the opinion that the Jury Commissioners failed to place a sufficient number of names of colored persons in the jury box from which the jury was drawn, in proportion to the colored population of the parish (R. 4-5).

Motion for a Change of Venue.

Petitioner also filed a motion for a change of venue, which was overruled without the presentation of any evidence in his behalf, and while he states in his brief that he

> "was unable to offer sufficient evidence upon said motion for change of venue, although the public feeling was such against him that he was unable to receive a fair trial in said parish, or to secure a fair and impartial jury therein, and it was necessary for the authorities to confine him, from the day of his arrest, in custody of the Criminal Sheriff for the Parish of Orleans, at the parish prison in New Orleans for safekeeping" (His Brief, p. 6).

as a matter of fact, there is nothing in the original or printed record, nor was there any evidence adduced in the trial court below, to substantiate this contention, and the reason for his incarceration in the Parish Prison at New Orleans was not for safekeeping, but because of the fact that the local jail in the Parish of St. John the Baptist, had been condemned by the State Health authorities as unfit for further use as a parish prison.

He offered no evidence whatever on the trial of the motion for a change of venue, and he produced no witnesses to show that feeling was running high against him, or that

he was unable to receive a fair trial or to secure a fair and impartial jury.

The motion for a change of venue was taken up and the judgment of the lower court was to the effect that no evidence was offered by the accused or his counsel; that counsel for the accused informed the court he did not desire to press the motion, and submitted the same to the court without any evidence whatsoever, after which the motion for a change of venue was denied, and no bill of exception was reserved to the ruling of the court.

Evidence on Motion to Quash.

In support of the allegations of his motion to quash, the petitioner called to the stand twelve witnesses, both white and negro, including the Clerk of Court who is ex-officio Chairman of the Jury Commission, the Sheriff, the Superintendent of Education, a member of the bar, the editor of a local newspaper, a former clerk of the District Court, two white citizens, and four negro citizens. It is significant at this time to call this Court's attention to the fact that he did not call as witnesses the five Jury Commissioners, entrusted with the duty and responsibility of getting up the list of three hundred names of citizens, possessing the necessary qualifications to serve as jurors, from which the Grand and Petit jury venires are selected and drawn.

Their testimony is, in substance, as follows:

H. R. Martin (R. 23), Clerk of Court, and by law ex-officio jury commissioner, testified that the names on the general venire list were placed in the box by the jury commissioners in his presence; is under impression that there are two, three or possibly four names of negroes on the general venire list, but he would have to go over it with someone who is more familiar with the names than he is, to be positive; does not know every man from each individual

ward. He is familiar with names on grand jury panel, that returned indictment, and they are all white. The petit jury panel that was drawn on December 29th (1936), contains the name of one negro whom he knows of, Ernest Martin, a resident of the Fifth Ward (R. 10, No. 30 for week of January 25, 1937). Witness has no idea of population of Parish, or what percentage of negroes.

WILLIAM DUHE, sheriff since 1928 (R. 27), not familiar with all names on general venire list, but most of them; was handed the general venire list (R. 56) and picked out the name of No. 33, F. N. Dinvaut, from the First Ward, and No. 174, Arthur Voisin, from the Fifth Ward. Those are the only ones he sees now. The present grand jury panel does not contain the name of a negro; he does not know the population of the Parish of St. John the Baptist, and cannot approximate the percentage of whites.

J. O. MONTEGUT, Superintendent of Schools (R. 30), thinks entire population of parish is about 14,000, of which 3,000 are negroes—males and females; can't approximate the number of males, but would guess one-half of the 3,000 to be males, and out of this number, about 25 or 50, over twenty-one years of age, would be eligible for jury service—all of which is merely a guess on his part.

LUCIEN TROXLER, a member of the bar (R. 34), can't estimate the population of the parish, and doesn't know what proportion there is of white and negroes.

O. J. BECNEL, a citizen sixty years of age (R. 35), doesn't know population of parish, nor the population of whites and blacks in the parish.

F. N. DINVUAT, a colored man (R. 35), has no idea how many colored people he knows in parish, but it seems that

population is half white and half black—is not positive—"that is just my mind." He has not the least idea how many negroes above the age of 21 can read and write, and are residents of the parish—it would be more than ten—he thinks so—he believes there are more than three hundred and fifty.

On cross-examination, he testified that he is just guessing all around. He can read and write. He thinks he knows H. P. Williams at Garyville, a colored man, an undertaker; he also thinks he knows George Courou; knows Albert Washington, Augustus Reed, all colored over 21 years of age; knows Washington and Reed can read and write, but don't know about the rest; he knows ten or twelve negroes around his store, above the age of 21, who can read and write their name, but can't say how qualified they are.

CHARLES DERONCELET, a colored man, 67 years of age (R. 40), can read and write a little; knows a few negroes above 21 years of age, who can read and write—about 12 or 15—but he is simply guessing; he doesn't know the population of St. John Parish, nor the percentage of colored people to white people, but believes it is less than half; he couldn't be exactly sure "I am simply guessing at these questions." He served on jury in his young days, before 1896, but not since. He can't name any of those who can read and write.

T. J. NAGEL, a citizen 59 years of age (R. 43), can't tell the negro population of the Parish, would not approximate the number of negroes in parish above 21 years, who can read and write.

CLARENCE SORAPARU, 31 years, a colored man (R. 44). He can read and write, has never been called to serve on a jury; knows a few colored men above twenty-one who can read and write, approximately, maybe a hundred and fifty; could not say what is percentage of negroes in the parish;

then he says probably 20 per cent—he doesn't know about that—this is according to his opinion.

On cross-examination, he testified he knows probably a dozen who can read and write—he knows one in LaPlace, Professor Reed Augustus, but can't tell his age. He knows his three brothers and four sisters can read and write, his brothers are above twenty-one years of age. He knows F. N. Dinvaut and his son, Newton Dinvaut, can read and write; he named six negroes who could read and write.

A. L. Brou, formerly Clerk of Court, 46 years old (R. 47), testified population of St. John Parish about 12 or 15 thousand, only guesswork; could not say what percentage are negroes, but fixes it about 30 per cent, which includes men, women and children; about 2 per cent of the 30 per cent are qualified to serve as petit jurors. He doubts if it would go to 100, in numbers.

Ignace Hillaire, colored man, 48 years (R. 49), can read and write a little bit, can read some portions of a newspaper; never been a juror in this parish. He knows about fifteen negroes above twenty-one years of age, who can read and write, in the parish. He named the following negroes as being able to read and write: Charley Hillaire, his brother, Romero Hillaire, also a brother, Artrey Simon, James Gautier, Sam Johnson, Rufert Dinvaut, a son of F. N. Dinvaut, and John Ory. He is unable to state how old these people are, but they are all over twenty-one years of age.

John D. Reynaud, age 50, editor of local newspaper (R. 54), had two negro subscribers to his paper in the parish. Was a United States census enumerator, and that the population of the parish, about thirteen or fourteen thousand, about three thousand negroes; about twelve hundred negro males above the age of twenty-one years—very few of these

can read and write—he wouldn't put it at more than about seventy-five, but intelligently, he would put it at fifty.

H. R. MARTIN, clerk of court, recalled (R. 55), testified the jury commissioners, in selecting the three hundred names for the general venire, would take them "off-hand". The jury commissioners handed in the names, but he don't know where they got the names from—he was present.

Argument and the Law.

Petitioner relies upon the decision of this Court rendered in the case of *Norris* v. *State of Alabama*, 294 U. S. 587, 55 Sup. Ct. Rep. 579, 79 L. Ed. 1074, re-affirming its ruling in the earlier cases of *Carter* v. *Texas*, 177 U. S. 442, 20 Sup. Ct. Rep. 687, 44 L. Ed. 839, and *Martin* v. *Texas*, 200 U. S. 316, 26 Supt. Ct. Rep. 338, 50 L. Ed. 497, where it was said:

> "Whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States."

In the Norris case, the court said:

> "And although the state statute defining the qualifications of jurors may be fair on its face, the constitutional provision affords protection against action of the state through its administrative officers in effecting the prohibited discrimination."

There is no controversy in this case as to the constitutional principle involved, and the Supreme Court of the

State of Louisiana has always recognized that principle, as shown by the following cases:

State v. *Casey*, 44 La. Ann. 969, 11 So. 583;
State v. *Joseph*, 45 La. Ann. 903, 12 So. 934;
State v. Murray, 47 La. Ann. 1424, 17 So. 832;
State v. *Baptiste*, 105 La. 661, 30 So. 147;
State v. *West*, 116 La. 626, 40 So. 920;
State v. *Lawrence*, 124 La. 378, 50 So. 406;
State v. *Turner*, 133 La. 555, 63 So. 169;
State v. *Gill*, 186 La. 339, 172 So. 412.

As a matter of fact, Act 135 of 1898, p. 216 of the Act of the Louisiana Legislature, provides that in the drawing of grand and petit jurors to serve in civil and criminal cases "there shall be no distinction made on account of race, color or previous condition."

Since the petitioner has based his motion to quash the indictment on the ground that the general venire box did not contain the name of any negro at the time the panel for the grand jury was drawn which returned the indictment against him, and that the officers in charge of drawing the jury deliberately excluded the names of negroes qualified to serve as grand or petit jurors, the burden of proof was upon him to prove the facts alleged.

We unhesitatingly state that if members of the negro or African race possessing the necessary qualifications to serve as jurors have been systematically and deliberately excluded from such service, solely because of their race and color, both the indictment and the grand jury panel should have been quashed.

> "The burden of proof is upon him alleging the existence of a fact."

Article 439, Criminal Code of Procedure of Louisiana.

It is a well-established principle of law in the State of

Louisiana that a motion to quash the indictment and the jury venire on the ground of discrimination, in order to avail the defendant, it must be established that all the names in the general venire box were of white people and that negroes were discriminated against on account of race or color.

State v. *Joseph*, 45 La. Ann. 903, 12 So. 934;
State v. *Murray*, 47 La. Ann. 1424, 17 So. 832;
Murray v. *Louisiana*, 163 U. S. 101-108, 41 L. Ed. 87-90;
State v. *West*, 116 La. 626, 40 So. 920.

"Courts are to presume that the members of the Jury Commission, *in the absence of testimony to the contrary*, perform the duties imposed upon them by law, and *he who asserts that the jury is not legally composed, assumes the burden of proof.*"

State v. *Gonsoulin*, 38 La. Ann. 459;
State v. *Johnson*, 47 La. Ann. 1092;
State v. *Shaw*, 47 La. Ann. 1094.

And this Court, in passing upon a similar question, in the case of *Franklin* v. *South Carolina*, 218 U. S. 161, 54 L. Ed. 981-985, said:

"In this class of cases, when the real objection is that a grand jury is so made up as to exclude persons of the race of the accused from serving in that capacity, *it is essential to aver and prove such facts as establish the contention.*"

Citing: *Martin* v. *Texas*, 200 U. S. 316, 50 L. Ed. 497.

See also:

Carter v. *Texas*, 177 U. S. 442, 44 L. Ed. 839;
Rogers v. *Alabama*, 192 U. S. 226, 48 L. Ed. 417;
Re Shibuya Jugiro, 140 U. S. 297-298, 35 L. Ed. 513.

The degree of proof required in this case, of the petitioner, was no different than that required in the decided

cases above referred to, and the petitioner absolutely failed to even make a *prima facie* showing of discrimination and exclusion of negroes from jury service, by reason of their color and race, and the finding of fact by the Supreme Court of Louisiana was correct and is fully sustained by the proof offered on the motion to quash.

The evidence shows, and the Supreme Court of Louisiana found as a matter of fact, that:

> "Not only did he fail to prove that there was discrimination against colored citizens of the parish because of their race or color at the time the grand jury which returned the indictment and the petit jury for that term of court were drawn, but he failed to prove that, as a matter of fact, the names of colored people were not included among the 300 names in the jury box. In fact, the testimony shows that, at the time the grand and petit juries were drawn, the names of at least four colored people were included in the list of 300 from which the grand jury was selected and the petit jury for that term of court was drawn. Mr. Martin, the clerk of court, said, on examining the general venire list, that there were two, three or four names of colored people included, and the sheriff of the parish testified that he recognized the names of two or three negroes on the list and that there might be more. Both the clerk of court and the sheriff testified that they were not personally acquainted with all of the male citizens of the parish and especially the colored citizens, and that, with more time to check the list, they might find more names than those already pointed out. Mr. Martin, the clerk of court, testified that the name of at least one negro was drawn to serve on the petit jury drawn at the same time that the grand jury sought to be quashed was selected. He and the sheriff both said they did not remember whether negroes had served on juries in that parish in former years or not. A colored man named Soraparu testified that he knew a few negroes who had served on juries in that parish. Another col-

ored man named Dinvaut testified that he himself had served on a jury in that parish in his 'young days', something like 30 years ago" (R. 70-71).

State v. *Hugh Pierre*, 189 La. 764, 180 So. 630.

Under the law of Louisiana, the qualifications for service as grand or petit jurors are the following:

"To be a citizen of this State, not less than twenty-one years of age, a bona fide resident of the parish in and for which the court is holden, for one year next preceding such service, able to read and write the English language, not under interdiction or charged with any offense, or convicted at any time of any felony, provided that there shall be no distinction made on account of race, color or previous condition of servitude; and provided further, that the District Judge shall have discretion to decide upon the competency of jurors in particular cases where from physical infirmity or from relationship, or other causes, the person may be, in the opinion of the judge, incompetent to sit upon the trial of any particular case.

"In addition to the foregoing qualifications, jurors shall be persons of well-known good character and standing in the community."

Article 172, Code of Criminal Procedure of Louisiana.

Furthermore, there is no set standard or rule which fixes the number of whites and blacks that must be on the general venire list, from which grand and petit jury venires are drawn, and as long as there is no deliberate or systematic exclusion of negroes from jury service, a negro charged with a crime, triable by a jury, cannot complain, and there is no denial of his constitutional rights, as long as a fair proportion of negroes, as compared to whites, are on the venire list from which the grand and petit juries are to be drawn, and the Supreme Court of Louisiana so held.

The Supreme Court of the State of Louisiana, having found as a fact, that there were four and possibly more

names of colored citizens on the jury roll of three hundred, from which the grand and petit juries were drawn, in discussing whether the number of names of negroes in the box was out of proportion to the number of whites, reached the following conclusion:

> "If there are no more than 75 or 100 colored males between the ages of 21 and 65 in the parish who can read and write—and when we consider that some of these may have been disqualified from jury service on one or more of the grounds stipulated in the act of the legislature—the names of four negroes out of 300 names on the jury roll does not seem disproportionate to the number of whites, and does not, we think, indicate that there was discrimination against the colored race" (R. 67-74, at p. 72).
>
> *State* v. *Pierre*, 189 La. 764, 180 So. 630.

In the Scottsboro case (*Norris* v. *Alabama*, 294 U. S. 598, 79 L. Ed. 1074), the evidence showed that for a generation or longer, no negro had been called for service on any jury in Jackson County, and that no names of negroes were placed on the jury roll, and for that reason, this Court held that there was a denial of the constitutional rights of the accused, and that the indictment should have been quashed upon that ground.

But no such situation exists with respect to the case at bar, because the evidence does show that there were names of negroes on the general venire list, and that as a matter of fact, negroes were actually drawn for jury service on the petit jury panel; and there has not been proven in this case, any deliberate or systematic exclusion of negroes from jury service in the Parish of St. John the Baptist, and for this reason, the ruling in the Scottsboro case does not apply to the case at bar.

The evidence in this case further shows that the petitioner failed to prove that there was discrimination against col-

ored citizens of the parish because of their race or color at the time the grand jury which returned the indictment and the petit juries for that term were drawn, and he failed to prove, as a matter of fact that the names of colored people were not included among the 300 names in the jury box.

We call the court's attention to the fact that the petitioner was actually tried by a jury of twelve, obtained from a regular petit jury panel of thirty names, of which twenty-eight responded for service, and a tales jury panel of fifty names, of which thirty-two responded—a total of sixty names among both panels. There were four negroes called for service—the first negro juror stated that he did not think he would understand the proceedings sufficiently well to pass intelligently upon the issues involved. The second negro was challenged by the State, and the two others who were called each were excused for cause, because both were opposed to capital punishment.

This is substantiated by the *per curiam* attached to the Bill of Exception No. 1, reserved to the refusal of the Court to quash the indictment and the grand jury venire (R. 6).

In the *Norris* case, in connection with the motion to quash the *trial* venire, the evidence showed that in Morgan County, no negro had ever served on a jury in that county, or been called for jury service, within the memory of witnesses who were long resident there. There was an abundance of evidence to show that there were a large number of negroes in that county who were qualified for jury service.

The Sheriff of the county, called as a witness in that case, scanned the jury roll, and after looking over every single name from "A" to "Z", was unable to point out any single negro at all. This Court found that there was no justification for this long-continued, unvarying and wholesale exclusion of negroes from jury service, inconsistent with the constitutional mandate, and accordingly, the judgment of conviction was reversed and the cause remanded for further

proceedings. But in the case at bar, no such condition exists.

The petitioner in his brief refers to the dissenting opinion of the Chief Justice of the Supreme Court of Louisiana, and lays considerable emphasis on the judgment of the trial court on the motion to quash. The trial judge maintained the motion in part and denied the motion in part. He quashed the petit jury venire, but refused to quash the indictment or the grand jury venire.

The Chief Justice of the Supreme Court of Louisiana dissented from the majority opinion, in that the distinction which the trial judge drew between the petit jury panel and the grand jury panel was contrary to the ruling of this Court in *Carter* v. *Texas*, 177 U. S. 442, 20 Sup. Ct. Rep. 687, 44 L. Ed. 839, and the other decisions there cited, and noted the fact that the grand jury panel in this case was taken from the same general venire list and general venire box that the petit jury panel was taken from, and he reasoned that when the trial judge quashed the petit jury panel because of the invalidity in the selection of the names that were placed in the general venire box and on the general venire list, his ruling had the effect of annulling the grand jury panel which was drawn from the same list of names in the general venire box.

We agree with the Chief Justice, if the evidence substantiated this position, but our contention is that both the trial judge and the Chief Justice were in error. The judge of the trial court, in quashing the petit jury venire, did so when as a matter of fact and as the evidence showed, there were names of negroes in the jury box from which the grand jury and the petit jury panels were drawn, for the reason that he had before him the evidence of the Clerk of Court and ex-officio Chairman of the Jury Commission, to the effect that there were two, three or possibly four names of negroes on the general venire list, and the Sheriff, as a wit-

ness, in testifying for the petitioner, when handed the general venire list, picked out the names of F. N. Dinvaut and Arthur Voisin, and it was from the list containing the names of Dinvaut, Voisin, and Martin that the grand jury was selected and the petit jury panels drawn for the January 1937 criminal term of court. (See Nos. 33, 173 and 174, R. 58, 61.) .

It is clear from the testimony of both the Clerk and the Sheriff that when the Grand Jury, which indicted the petitioner, was selected, the jury box, with its three hundred names, contained the names of negro citizens qualified to serve on grand and petit juries, which certainly showed, if anything that there was clearly no discrimination or systematic exclusion of negroes from jury service in the Parish of St. John the Baptist, on account of their race or color, and when the judge of the trial court quashed the petit jury panel, he committed an error, although the error did not work to the prejudice of the petitioner, because he was not tried until July, 1937, by an entirely different petit jury; and as the record shows, his error was committed in quashing the petit jury panel, when there were actually negroes on the venire list, and the Chief Justice, in his dissenting opinion, committed the same error as did the trial judge.

Therefore, in the absence of any evidence to the contrary, we believe, in the face of the facts, that it can be correctly assumed that there were more names of negroes on the general venire list from which the grand and petit jury venires were drawn, than the three whose names have been mentioned.

Conclusion.

It is, therefore, respectfully submitted that the record, and the evidence adduced on the trial of this case show that there was no discrimination and exclusion of negroes from service on the grand or petit juries in the Parish of St. John

the Baptist, solely because of their race or color, neither does it show that negroes were systematically and deliberately excluded from service, and that the decision of the Supreme Court of Louisiana is not in conflict with the ruling of this Court in the case of *Norris* v. *Alabama*, 294 U. S. 598, 79 L. Ed. 1074, re-affirming its ruling in the earlier cases of *Carter* v. *Texas*, 177 U. S. 442, 44 L. Ed. 839, and *Martin* v. *Texas*, 200 U. S. 316, 50 L. Ed. 497, for the reason that these cases are not applicable to the case at bar.

We also respectfully submit that the petitioner has failed to prove that there was discrimination against negro citizens of the Parish of St. John the Baptist because of their race or color at the time the grand jury which returned the indictment and the petit juries for that term of court were drawn; that the petitioner was not denied any of his constitutional or statutory rights in the trial of his case, or due process of law, under the constitution of the United States and of the State of Louisiana; that the writ of certiorari heretofore granted should be recalled and set aside; and the conviction and sentence of petitioner, and the judgment of the trial court and the Supreme Court of the State of Louisiana should be affirmed.

Respectfully Submitted:

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P.S

SUPREME COURT OF THE UNITED STATES.

No. 142.—October Term, 1938.

Hugh Pierre, Petitioner, *vs.* State of Louisiana.	On Writ of Certiorari to the Supreme Court of the State of Louisiana.

[February 27, 1939.]

Mr. Justice Black delivered the opinion of the Court.

Indicted for murder, petitioner, a member of the negro race, was convicted and sentenced to death in a State court of the Parish of St. John the Baptist, Louisiana. The Louisiana Supreme Court affirmed.[1] His petition for certiorari to review the Louisiana Supreme Court's judgment rested upon the grave claim—earnestly, but unsuccessfully urged in both State courts—that because of his race he had not been accorded the equal protection of the laws guaranteed to all races in all the States by the Fourteenth Amendment to the Federal Constitution. For this reason, we granted certiorari.[2]

The indictment against petitioner was returned January 18, 1937. He made timely motion to quash the indictment and the general venire from which had been drawn both the Grand Jury that returned the indictment and the Petit Jury for the week of his trial. His motion also prayed that the Grand Jury Panel and the Petit Jury Panel be quashed. This sworn motion alleged that petitioner was a negro and had been indicted for murder of a white man; that at least one-third of the population of the Parish from which the Grand and Petit Juries were drawn were members of the negro race, but the general venire had contained no names of negroes when the Grand Jury that indicted petitioner was drawn; that the state officers charged by law with the duty of providing names for the general venire had "deliberately excluded therefrom the names of any negroes qualified to serve as Grand or Petit Jurors, . . ." and had "systematically, unlawfully and unconstitutionally excluded negroes from the Grand or Petit Jury in said Parish" for at

[1] 189 La. 764.
[2] — U. S. —.

least twenty years "solely and only because of their race and color"; and that petitioner had thus been denied the equal protection of the laws guaranteed him by the Constitution of Louisiana and the Fourteenth Amendment to the Constitution of the United States.

No pleadings denying these allegations appear in the record, and the State offered no witnesses on the motion. Petitioner offered twelve witnesses who were questioned by his counsel, the State's Assistant District Attorney, and the court. On the basis of this evidence, the trial judge sustained the motion to quash the Petit Jury Panel and venire and subsequently ordered the box containing the general venire (from which both Grand and Petit Juries had been drawn) emptied, purged and refilled. This was done; a new Petit Jury Panel composed of both whites and negroes was subsequently drawn from the refilled Jury box and from this Panel a Petit Jury was selected which tried and convicted petitioner. Although the Grand Jury that indicted petitioner and the quashed Petit Jury Panel had been selected from the same original general venire[3] the trial judge overruled that part of petitioner's motion seeking to quash the Grand Jury Panel and the indictment.

First. The reason assigned by the trial judge for refusing to quash the Grand Jury Panel and indictment was that "the Constitutional rights of the defendant [are] . . not affected by reason of the fact that persons of the Colored or African race are not placed on the Grand Jury, because . . . the mere presentment of an indictment is not evidence of guilt . . . it simply informs the Court of a commission of a crime and brings the accused before the court for prosecution." But the bill of rights of the Louisiana Constitution (Dart, 1932, Art. 1. § 9) provides that no person shall be held to answer for capital crime unless on a presentment or indictment by a grand jury. . . . ." And the State concedes

[3] Under Louisiana practice the District Judge orders the Jury Commission to select three hundred qualified jurors in a given Parish, who compose the general venire list, to be kept complete and supplemented from time to time. These names are placed in the "General Venire Box." From the general venire list, the Commission selects twenty persons qualified as grand jurors, to serve six months, who compose the "List of Grand Jurors." The Judge selects a foreman from the "List of Grand Jurors" and the sheriff draws eleven more who, with the foreman, constitute the Grand Jury Panel. After selection of the "List of Grand Jurors" the Commission draws thirty names from the "General Venire Box" to serve as Petit Jurors, who are designated a "List of Jurors" and this "List of Jurors" is kept in the "Jury Box." Louisiana Code of Criminal Procedure (Dart, 1932) Title XVIII, c. 2.

re, as the Supreme Court of Louisiana pointed out in its opinion this case, that " . . . it is specially provided in the [Louisiana] w prescribing the method of drawing grand and petit jurors to ve in both civil and criminal cases that 'there shall be no distinc- n made on account of race, color, or previous condition of ser- de' " and "If . . . [qualified] members of the Negro . . . race . . have been systematically excluded from . . . service in e Parish of St. John, . . . solely because of their race or or, the indictment should have been quashed . . . ." Ex- sion from Grand or Petit Jury service on account of race is bidden by the Fourteenth Amendment.[4] In addition to the eguards of the Fourteenth Amendment, Congress has provided t "No citizen possessing all other qualifications . . . shall disqualified for service as grand or petit juror in any court of United States, or of any State on account of race, color or evious condition of servitude; . . . ."[5] Petitioner does not e contend that Louisiana laws required an unconstitutional ex- sion of negroes from the Grand Jury which indicted him. His dence was offered to show that Louisiana—acting through its ad- nistrative officers—had deliberately and systematically excluded groes from jury service because of race, in violation of the laws d Constitutions of Louisiana and the United States.[6]

lf petitioner's evidence of such systematic exclusion of negroes m the general venire was sufficient to support the trial court's ion in quashing the Petit Jury drawn from that general venire, necessarily follows that the indictment returned by a Grand y, selected from the same general venire, should also have been ashed.

Second. But the State insists, and the Louisiana Supreme Court d (the Chief Justice dissenting), that this evidence failed to ablish that members of the negro race were excluded from the and Jury venire on account of race, and that the trial court's ding of discrimination was erroneous. Our decision and judg- nt must therefore turn upon these disputed questions of fact. our consideration of the facts the conclusions reached by the preme Court of Louisiana are entitled to great respect. Yet,

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Strauder v. West Va., 100 U. S. 303, 308, 309; Carter v. Texas, 177 U. S. 447; Martin v. Texas, 200 U. S. 316, 319.

U. S. C. Title 8, § 44.

Cf., Norris v. Alabama, 294 U. S. 587, 589; Neal v. Delaware, 103 U. S. 397; Carter v. Texas, *supra*, at 447; Hale v. Ky., 303 U. S. 613, 616.

when a claim is properly asserted—as in this case—that a citizen whose life is at stake has been denied the equal protection of his country's laws on account of his race, it becomes our solemn duty to make independent inquiry and determination of the disputed facts[7]—for equal protection to all is the basic principle upon which justice under law rests. Indictment by Grand Jury and trial by jury cease to harmonize with our traditional concepts of justice at the very moment particular groups, classes or races—otherwise qualified to serve as jurors in a community—are excluded as such from jury service.[8] The Fourteenth Amendment intrusts those who because of race are denied equal protection of the laws in a State first "to the revisory power of the higher courts of the State, and ultimately to the review of this court."[9]

Petitioner's witnesses on the motion were the Clerk of the court—ex-officio a member of the Jury Commision; the Sheriff of the Parish; the Superintendent of Schools who had served the Parish for eleven years; and other residents of the Parish, both white and colored. The testimony of petitioner's witnesses (the State offered no witnesses) showed that from 1896 to 1936 no negro had served on the Grand or Petit Juries in the Parish; that a venire of three hundred in December, 1936, contained the names of three negroes, one of whom was then dead, one of whom (D. N. Dinbaut) was listed on the venire as F. N. Dinfant; the third—called for Petit Jury service in January, 1937—was the only negro who had ever been called for jury service within the memory of the Clerk of the court, the Sheriff, or any other witnesses who testified; and that there were many negro citizens of the Parish qualified under the laws of Louisiana to serve as Grand or Petit Jurors. According to the testimony, negroes constituted 25 to 50 per cent of a total Parish population of twelve to fifteen thousand. The report of the United States Department of Commerce, Bureau of the Census, for 1930, shows that the total Parish population was fourteen thousand and seventy-eight, 49.7 per cent native white, and 49.3 per cent negro. In a total negro population (ten years old and over) of five thousand two hundred and ninety, 29.9 per cent were classified by the census as illiterate.

The Louisiana Supreme Court found—contrary to the trial judge—that negroes had not been excluded from jury service on ac-

7 Norris v. Alabama, 294 U. S. 587, 590.

8 Cf. Strauder v. West Va., *supra*, 308, 309.

9 Virginia v. Rives, 100 U. S. 313, 319.

ount of race, but that their exclusion was the result of a *bona fide* mpliance by the Jury Commission with State laws prescribing ury qualifications. With this conclusion we cannot agree. Louisiana law requires the Commissioners to select names for the general enire from persons qualified to serve without distinction as to race r color. In order to be qualified a person must be:

a) A citizen of the State, over twenty-one years of age with two years' residence in the Parish,
b) Able to read and write the English language,
c) Not charged with any offense or convicted of a felony,
d) Of well known good character and standing in the community.[10]

The fact that approximately one-half of the Parish's population ere negroes demonstrates that there could have been no lack of olored residents over twenty-one years of age.

It appears from the 1930 census that 70 per cent of the negro opulation of the Parish was literate, and the County Superinendent of Schools testified that fully two thousand five hundred 83 per cent), of the Parish's negro population estimated by him t only three thousand, were able to read and write. Petitioner's vidence established beyond question that the majority of the negro opulation could read and write, and, in this respect, were eligible nder the statute for selection as jurymen.

There is no evidence on which even an inference can be based hat any appreciable number of the otherwise qualified negroes in he Parish were disqualified for selection because of bad character r criminal records.

We conclude that the exclusion of negroes from jury service was ot due to their failure to possess the statutory qualifications.

The general venire box for the Parish in which petitioner was ied was required[11]—under Louisiana law—to contain a list of ree hundred names selected by Jury Commissioners appointed by he District Judge, and this list had to be supplemented from time time so as to maintain the required three hundred names. Although Petit Jurors are drawn from the general venire box after he names have been well mixed,[12] the law provides[13] that "the com-

[10] Louisiana Code of Criminal Procedure, *supra*, Title XVIII, c. 1.
[11] See note 3, *supra*.
[12] Louisiana Code of Criminal Procedure, *supra*, Title XVIII, c. 2, Art. 181.
[13] *Id.*, Art. 180.

mission shall *select* . . . [from the general venire list] the names of twenty citizens, possessing the qualifications of grand jurors, . . .'' (Italics supplied.) The twenty names out of which the challenged Grand Jury of twelve was drawn, actually were the first twenty names on a new list of fifty names supplied—on the day the Grand Jury List was selected—by the Jury Commission as a ''supplement'' to the general venire of three hundred. Thus, if colored citizens had been named on the general venire, they apparently were not considered, because the Commission went no further than the first twenty names on the supplemental list which itself contained no names of negroes. Furthermore, the uncontradicted evidence on the motion to quash showed that no negro had ever been *selected* for Grand Jury service in the Parish within the memory of any of the witnesses who testified on that point.

The testimony introduced by petitioner on his motion to quash created a strong *prima facie* showing that negroes had been systematically excluded—because of race—from the Grand Jury and the venire from which it was selected. Such an exclusion is a denial of equal protection of the laws, contrary to the Federal Constitution —the supreme law of the land.[14] ''The fact that the testimony . . . was not challenged by evidence appropriately direct, cannot be brushed aside.''[15] Had there been evidence obtainable to contradict and disprove the testimony offered by petitioner, it cannot be assumed that the State would have refrained from introducing it. The Jury Commissioners, appointed by the District Judge, were not produced as witnesses by the State. The trial judge, who had appointed the Commission, listening to the evidence and aided by a familiarity with conditions in the Parish of many years' standing, as judge, prosecutor and practicing attorney, concluded that negroes had been excluded from Jury service because of their race, and ordered the venire quashed and the box purged and refilled. Our examination of the evidence convinces us that the bill of exceptions which he signed correctly stated that petitioner ''did prove at the trial of said motion to Quash that negroes as persons of color had been purposely excluded from the Grand Jury Venire and Panel which returned said indictment against . . . [petitioner] on account of their color and race, . . .''

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[14] Neal v. Delaware, *supra*, 397; Norris v. Alabama, *supra*, 591 Hale v. Ky., *supra*, 616.

[15] Norris v. Alabama, *supra*, 594, 595.

Principles which forbid discrimination in the selection of Petit Juries also govern the selection of Grand Juries. "It is a right to which every colored man is entitled, that, in the selection of Jurors to pass upon his life, liberty, or property, there shall be no exclusion of his race, and no discrimination against them because of their color."[16] This record requires the holding that the court below was in error both in affirming the conviction of petitioner and in failing to hold that the indictment against him should have been quashed. The cause is reversed and remanded to the Supreme Court of Louisiana.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[16] Virginia *v.* Rives, *supra*, 322-3.

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